NCLR
NATIONAL COUNCIL OF LA RAZA

Legislative Responses to Predatory Lending in Latino Communities

Presented at:

Legislative Proposals on Reforming Mortgage Practices

Submitted to:

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Submitted by:

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My name is Janis Bowdler, Senior Housing Policy Analyst on at the National Council of La Raza (NCLR). At NCLR, I direct research, policy analysis, and advocacy on affordable homeownership, and provide technical assistance to NCLR housing counseling grantees. Prior to coming to NCLR, I worked for a large community development corporation (CDC) in Cleveland, Ohio, as a Project Manager developing affordable housing. During my time at NCLR, I have published a number of papers on the subject of predatory mortgage lending, including *Saving Homes, Saving Communities: Latino Brokers Speak Out on Hispanic Homeownership* and *Jeopardizing Hispanic Homeownership: Predatory Practices in the Homebuying Market*. In addition, I have provided expert testimony before Congress and regulators on numerous occasions, recently before the House Financial Services Subcommittee on Housing and Community Opportunity, the Senate Banking, Housing, and Urban Affairs Committee, and before the Board of Governors of the Federal Reserve.

I would like to thank Chairman Frank and Ranking Member Bachus for inviting NCLR to testify today. NCLR strongly believes that the mortgage market does not work well for Latino borrowers. Like all Americans, Latinos rely on homeownership to provide financial security for their families and build long-term wealth. But research suggests that one in twelve Latinos with mortgage loans may now go into foreclosure. For this reason, action by the Congress and regulators is timely and urgently needed. We applaud Chairman Frank and committee members for taking steps to address predatory mortgage lending and restore confidence in the U.S. housing market.

For more than two decades, NCLR has actively engaged in relevant public policy issues such as preserving and strengthening the Community Reinvestment Act (CRA) and the Home Owner Equity Protection Act (HOEPA), supporting strong fair housing and fair lending laws, increasing access to financial services among low-income people, and promoting homeownership in the Latino community. In addition to its policy and research work, as a sponsor of housing counseling agencies NCLR has been helping Latino families become homeowners for nearly ten years as a sponsor of housing counseling agencies. The NCLR Homeownership Network (NHN) works with 20,000 families annually, nearly 3,000 of whom become homeowners. Our subsidiary, the Raza Development Fund (RDF), is the nation's largest Hispanic Community Development Financial Institution (CDFI). Since 1999, RDF has provided $400 million in financing for locally-based development projects throughout the country, building the capacity of local nonprofits and creating opportunities for Latino communities. These relationships have increased NCLR's institutional knowledge of how Latinos interact with the mortgage market.

As detailed below, Chairman Frank, Congressman Miller, and Congressman Watt have produced a bill that includes a number of provisions that directly address the concerns of the Latino community.

Protecting Borrowers

As detailed in our reports and papers, NCLR has documented the flaws in the mortgage market that result in too many Latino and immigrant borrowers paying more than they should for their mortgage loan.[1] Unique borrower characteristics (i.e., thin credit files or a limited credit history, multiple wage earners in a household, and extensive use of cash income) for Latino and immigrant borrowers require more time and resources for mortgage lenders to serve appropriately. Many Latino families have been steered toward mortgage loans that have been easy to underwrite and profitable for originator but expensive and risky for the borrower. As a result, we are experiencing record-high foreclosure rates with market forecasters predicting these rates will increase well into 2008.

Mr. and Ms. Silva are just one of the thousands of families that have sought assistance from NHN housing counselors. The Silvas had good incomes and credit histories. They bought a home in Lawrence, Massachusetts for $380,000, which was at the top of their price range. The transaction included faulty title work and the home was poorly constructed. Moreover, the Silva's unknowingly were saddled with an unaffordable mortgage package. They received an "80/20" package – two loans, one for 80% of the purchase price, the other for 20%, as a way to finance 100% of the purchase price. The first loan was an Interest Only 2/6 Adjustable Rate Mortgage (ARM), meaning that the loan would be fixed for the first two years and then adjusts every six months. Under the impression that they were receiving a fixed rate loan, the Silvas believed their monthly payments would be manageable over time. However, they now face an unaffordable rate reset that may cause them to lose their home. When looking into their refinancing opportunities, they were told by area lenders that their home value was inflated at the time of the purchase and they now owe more than the value of their home. Their initial mortgage broker discouraged them from getting a home inspection, claiming "it was a waste of money for a new construction."

The homeownership counseling industry is being swamped with calls from borrowers seeking assistance in order to avoid foreclosure. Recent research from Moody's concluded that only 1% of eligible loans are being modified. Borrowers and counselors are calling NCLR to report that they or their clients cannot break away from their abusive loans.

The current environment suggests that the housing market is not correcting in a way that will help borrowers stay in their homes. Moreover, without improved consumer protections and greater system-wide accountability within the mortgage lending market, predatory lending will continue to persist and strip wealth and equity from Latino homeowners.

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[1] Bowdler, Janis and Tim Sandos, *Saving Homes, Saving Communities: Latino Brokers Speak Out on Hispanic Homeownership.* Washington, D.C. National Council of La Raza and National Association of Hispanic Real Estate Professionals, September, 2007; *Challenges to Building Sustainable Homeownership in Latino Communities,* presented by Janis Bowdler, National Council of La Raza, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC, March 27, 2007; *Protecting Latino Wealth: Alternatives to Foreclosure,* presented by Janis Bowdler, National Council of La Raza, before the Committee on Financial Services, U.S. House of Representatives, Washington, DC, April 17, 2007; *Testimony on the Authority of the Federal Reserve under HOEPA*, presented by Janis Bowdler, National Council of La Raza, before the Federal Reserve, Washington, DC, June 14, 2007; *Testimony on the Impact of the Home Equity Lending Market on Latinos*, presented by Janis Bowdler, National Council of La Raza, before the Federal Reserve, Washington, DC, August 15, 2006; Bowdler, Janis, *Searching for the American Dream: Creating a Fair Housing System that Works for Latinos.* Washington DC: NCLR, May 2006; Goering, John, ed., *Fragile Rights within Cities: Government, Housing, and Fairness.* Lanham, Maryland: Rowman & Littlefield, 2007; Bowdler, Janis, *Jeopardizing Hispanic Homeownership: Predatory Practices in the Homebuying Market.* Washington, DC: NCLR, March 2005.

Several provisions in H.R. 3915 would offer increased protections to all homeowners that may help to prevent in the future the type of abuse experienced by the Silvas.

- **Anti-steering provisions.** Two provisions within H.R. 3915 curb the practice of steering borrowers to unaffordable loans or those that are more expensive than warranted by a borrowers' credit risk. Many originators are paid premiums for adding prepayment penalties, increasing interest rates, including onerous and unnecessary terms, or for shifting borrowers to limited documentation loans (despite their ability to document their income). These premiums encourage steering unsuspecting borrowers, including many Latino and immigrant borrowers, toward risky and expensive products. The result is that many Hispanic homeowners waste hard-earned income on paying unnecessary fees and higher than reasonable interest when they should be paying off principal, building equity and wealth. Moreover, recent research shows that the risk of foreclosure increases with certain high-cost or risky mortgage products, leaving many Latino families even more vulnerable. As described in the story above, the Silvas face the possibility of going into default. The bill would eliminate compensation based on the terms of the borrower's mortgage, and prescribes regulations to be written by bank regulators to prohibit these practices.

- **Mortgage originator licensing system.** Most borrowers rely on mortgage professionals to coach them through the largest financial transaction they are likely to make in their lifetime. American families rely on professionals such as doctors, lawyers, accountants, and stockbrokers, all of whom have legal and ethical responsibilities to the consumer. Originators should be obliged to give consumers information they can trust. For many Latino homebuyers and owners who use mortgage brokers, transparency and accountability at the transaction level is critical. In fact, through a series of roundtables in partnership with the National Association of Hispanic Real Estate Professionals (NAHREP), NCLR was able to hear from brokers directly their desire to have strong licensing and accountability standards. H.R. 3915 moves in the right direction in this respect. It would regulate mortgage originators, including mortgage brokers, and create minimum licensing and regulatory standards for states to implement, preserving their ability to provide further protections. HUD would be required to craft rules designed to ensure that originators operating in states with scant regulatory protections declare on whose behalf they are working and operate in such a way as not to harm the borrower or the creditor. Under these rules, unregulated agents will be required act in the sole interest of the consumer. NCLR looks forward to working with the Committee to expand applicability of these standards. Had they been in place, these standards could have prevented the Silvas from being misled by their mortgage broker to forego an inspection and accept loan terms that were not favorable to their financial circumstances.

- **Ability-to-repay standard.** While many would consider it common sense to make loans a borrower can afford to repay, unaffordable loans are at the root of many abusive lending tactics. Teaser rates, deceptive advertising, and weak underwriting standards contribute to the making of loans that borrowers could never reasonably be expected to repay. H.R. 3915 sets forth guidelines for the federal banking agencies to regulate underwriting practices which will ensure that borrowers receive loans they can afford to repay. The standard makes it clear that the borrower's financial circumstances, including taxes, insurance, and other related costs, are factored into the determination of eligibility for a home loan. NHN housing counselors are working with thousands of families, like Mr. and Ms. Silva, who are facing foreclosure and who received loans that were never affordable in the first place.

The Mortgage Reform and Anti-Predatory Lending Act of 2007 includes other substantive protections for which the authors should be commended, including the limitation on prepayment penalties, the creation of a net tangible benefit, and additional protections for high-cost loans. In addition, NCLR would like to thank Chairman Frank, Congressman Miller, and Congressman Watt for not eroding strong protections available to some borrowers at the state level.

Recommendations

Strengthening H.R. 3915

While many of the protections set forth in H.R. 3915 are significant steps forward, key enforcement provisions must be strengthened in order for consumers to benefit from those protections.

- **Anti-steering enforcement.** The enforcement provision for the anti-steering section unnecessarily and arbitrarily caps the remedy to consumers available under the Truth in Lending Act (TILA) to three times the amount of direct or indirect compensation. Elsewhere in the bill the penalties under TILA are increased – provision NCLR supports. Thus, we believe those penalty provisions should apply equally here, without caps.

- **Assignee liability.** Generally speaking borrowers use their right of rescission to, in effect, cancel their bad loan while gaining the opportunity to refinance into a better loan. The right of rescission is expanded in this bill, including ensuring that a family that receives a loan that violates the terms of the legislation could defend their home in the case of a foreclosure. However, we are concerned that an exemption created in the bill would make it highly unlikely a consumer could return to the holder of their loan (the assignee) to exercise the right. Since most lenders sell their loans to Wall Street investors, borrowers like the Silvas often meet a dead end when they complain about their abusive loan to their original lender. To get their loan back, they must have access to the holder of the loan. The exemption would mean that the only way to access their loan holder and cancel their bad loan is to default on their mortgage and face foreclosure.[2] Given the obvious negative impact of foreclosure, this is an extremely undesirable and dangerous position for the consumer.

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[2] The bill provides for limited liability against an assignees and securitizers that would allow consumers to rescind and collect reasonable costs associated with the violation and obtaining the rescission. Our concern lies in an exemption established for those that have a policy against buying certain kinds of loans (loans other than those defined in H.R. 3915 as "qualified mortgage" and a "qualified safe harbor mortgage") and that have representations and warranties from seller or assignor to this effect. Such an exemption could leave many borrowers without the ability to access the strongest remedy laid out in the bill, the right to rescind the loan.

- **Right of rescission.** H.R. 3915 would expand the right of rescission under TILA, as mentioned above. However, this right would be much stronger and more meaningful if it were generally connected to all harms committed under any provision of the bill and at any time within the statute of limitations, so long as a harmful violation can be demonstrated.

Additional Recommendations
NCLR looks forward to working with the authors of H.R. 3915, its cosponsors, and other members of this committee to continue to strengthen the bill. In addition to strengthening the enforcement provisions as described above, NCLR offers additional recommendations to enhance and complement the overall efforts of H.R. 3915.

- **Make loss mitigation mandatory.** Every homeowner deserves the right to loss mitigation services that may protect their investment and home equity. Servicers should be required to engage in reasonable efforts to prevent foreclosure by providing loss mitigation services. In addition, lenders and loan servicers should implement a streamlined, standardized approach and method for evaluating and modifying all loans that are delinquent, in foreclosure, or carry an adjustable rate. Legislation has been introduced in the House and in the Senate, which would push servicers to adopt improved loss mitigation tactics (see S. 1386).

- **Expand and strengthen the Community Reinvestment Act.** Research has shown that CRA has had a positive impact on affordable lending to underserved communities. Extending CRA lending obligations to all lenders creates an affirmative obligation to improve the quality of loan products available to low- and moderate-income borrowers and communities.

- **Invest in homeownership and foreclosure prevention counseling.** While many industry stakeholders have held increased education as a potential remedy for the lack of information in the marketplace, few are doing enough to support and strengthen the counseling industry. NCLR urges Congress and regulators to establish an incentive for investing in housing counseling. In addition, we applaud Congress and members of this committee for your continued support of the HUD Housing Counseling Program and urge appropriators to support the Senate's attempt increase funds available for this program given the anticipated rise in the number of families who need such services.